



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-197**
 When tax liability arises.

Date last adopted: **June 20, 1990**

Reviewer: **JoAnne Gordon**

Date review completed: **September 13, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

WAC 458-20-197 addresses when income must be reported and tax paid on the Combined Excise Tax Return. It provides general instructions for persons reporting under an accrual or cash receipts basis. It also provides specific instructions for building and construction contractors and warehousemen.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)



Please explain.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

ETA 198.08.197, When sales tax is due on payments retained under public works contracts, explains that a contractor is subject to tax based upon when the income is earned even if some of the income is withheld to ensure payment of certain obligations of the contractor. This information should be incorporated into WAC 458-20-170 (Constructing and repairing of new or existing buildings . . .) and/or WAC 458-20-171 (Building, repairing or improving streets . . .). (See ancillary document review checklist for ETA 198.)

Det. No. 90-84, 9 WTD 157 (1990) – Taxpayer managed a pension plan trust and hired an investment adviser. The adviser withdrew fees for services directly from the pension



plan. Taxpayer claimed it was not subject to B&O tax on fees directly withdrawn by adviser as the taxpayer never received the fees as income. The determination found that the taxpayer was entitled to receive the funds and the amounts directly withdrawn by the investment adviser represented one of the costs of doing business. At such time as the rule is revised, consideration should be given to discussing constructive receipt and providing examples, or referencing WAC 458-20-199, which includes a discussion and examples of constructive receipt.

Det. No. 95-020, 15 WTD 118 (1996) – Collection agency, taxpayer, contracts with and agrees to pay another collection agency for amounts collected on behalf of its client. Contracted agency retains fee before forwarding amount collected to taxpayer. Taxpayer claims not to owe B&O tax on amounts retained by second collection agency because the taxpayer keeps its books on a cash basis and, as such, the amounts were never received. Determination provides clear explanation of constructive receipt of income. Again, when the rule is revised, the rule writer should consider addressing the issue and giving examples or referencing WAC 458-20-199.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

At this time there is no compelling reason to revise WAC 458-20-197. However, the rule is not written in the format currently used by Dept. There is no introduction to the rule and there are no examples of the rule's application.

The first paragraph makes reference to when a sale of tangible personal property occurs and to when sales tax is due for rentals of tangible personal property. Reference to WAC 458-20-211 is provided for the rental of tangible personal property.

For a taxpayer keeping records on an accrual basis, the rule explains that value accrues at the time the taxpayer becomes legally entitled to receive consideration. For a taxpayer keeping records on a cash receipts basis, the rule explains that value proceeds to the taxpayer when the taxpayer receives the payment, either actually or constructively. There are many circumstances under which a taxpayer may be entitled to receive consideration but does not due to actions or decisions made the taxpayer.



The rule currently does not address such circumstances. However, WAC 458-20-199, Accounting Methods, discusses constructive receipt and provides three examples. At such time as WAC 458-20-197 is revised, the rule writer should consider either referencing WA 458-20-199 or addressing the issue in WAC 458-20-197.

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

RCW 82.32.300, Department of Revenue to Administer, directs the Department to “make and publish rules and regulations” necessary for reporting taxes imposed under the various chapters of Title 82 RCW.

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

As an interpretive rule, WAC 458-20-197 does not impose administrative burdens that are not required by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to



		correct any disproportionate impact on any particular segment of the regulated community?
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Please explain.

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent following apply to determining when tax liability arises:**

RCW 82.04.070 Gross proceeds of sale
RCW 82.04.080 Gross income of the business
RCW 82.04.090 Value proceeding or accruing
RCW 82.04.220 Business and occupation tax imposed
RCW 82.32.045 Taxes—When due and payable . . .

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

ETA 198.08.197 When sales tax is due on payments retained under public works contracts

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

Det. No. 85-117B, 2WTD 109 (1986) – Accrual vs. cash receipts reporting methods associated with bad debt deduction for sales tax. Determination issued before the 1990 rule revision.

Det. No. 87-80, 2 WTD 407 (1987) – Accrual vs. cash receipts reporting. Determination issued before the 1990 rule revision.

Det. No. 86-309A, 4 WTD 341 (1987) - Determination issued before the 1990 rule revision.

Det. No. 88-22, 5 WTD 53 (1988) - Determination issued before the 1990 rule revision.

Det. No. 88-141, 5 WTD 129 (1988) – Future sale of receivable at a discount does not alter original amount subject to tax. There is no need to this address within the rule.



Det. No. 88-260, 6 WTD 147 (1988) – Reporting of interest: Nominal discussion of WAC 458-20-197. Determination issued before the 1990 rule revision.

Det. No. 89-493, 8 WTD 309 (1989) - Determination issued before the 1990 rule revision.

Det. No. 90-124, 9 WTD 259 (1990) – Determination overruled or modified in part by Det. No. 93-269ER, 14 WTD 153 (1995). Issue primarily that of determining when a business is a financial business and entitled to deduction provided by RCW 82.04.4281, investments or the use of money as such.

Det. No. 90-297, 10 WTD 87 – Taxpayer was a for-profit corporation that owned and operated a facility for development adults. The taxpayer received predetermined amounts from DSHS for operation of facility. However, the taxpayer was only entitled to keep amounts actually spent. Amounts not spent were returned to DSHS. Determination concluded that amounts returned by taxpayer were not amounts the taxpayer was entitled to receive and were not subject to B&O tax. The taxpayer also received amounts from the Social Security Administration and was required to set aside a certain amount for exclusive use and benefit of individual residents. Determination concluded that taxpayer was not legally entitled to receive those amounts that were required to be set aside. The taxpayer also received amounts from DSHS that were specifically earmarked for the resident's transportation. The taxpayer exclusively used these funds to purchase bus passes. Determination concluded that such amounts were advances and reimbursements and not subject to tax. WAC 458-20-197 addresses issues.

Det. No. 91-174, 11 WTD 353 (1992) – Taxpayer stored tooling sold to customer at its Washington location. Determination included discussion of constructive delivery. In light of the sales tax exemption for manufacturing machinery and equipment, there is no need for the rule to address issues raised by determination.

Det. No. 90-162, 12 WTD 291 (1990) – Taxpayer sold the right to receive payments on leases of tangible personal property. Not directly a WAC 458-20-197 issue.

Det. No. 93-006, 12 WTD 561 (1993) – Taxpayer was a dentist performing services for another dentist and entitled to receive 30 percent of the billings. Discussion as to whether other 70 percent accrued to the taxpayer. WAC 458-20-197 addresses issues.

Det. No. 92-295, 13 WTD 160 (1993) - Contractor reporting. WAC 458-20-197 addresses issues.

Det. No. 94-084, 14 WTD 240 (1995) – Contractor reporting. WAC 458-20-197 addresses issues.

Det. No. 97-207, 17 WTD 195 (1998) – Application of penalty to one-time filer keeping records on cash receipts basis. WAC 458-20-197 addresses issues.



Det. No. 98-098, 17 WTD 424 (1998) – Machinery and equipment, unconditional sales contract: Customer entered into unconditional sales contract for machinery and equipment and installment payments were received before sales tax exemption became effective. However, machinery and equipment was not delivered to customer until after the exemption's effective date. Administrative Law Judge determined that WAC 458-20-235, effect of rate changes, determined application of exemption.

Det. No. 99-032, 18 WTD 434 (1999) –1031 Exchange Facilitator escrow or service and interest income. Exchanger rather than facilitator entitled to interest. Interest does not represent value accruing because facilitator is not entitled to receive. WAC 458-20-197 addresses issues.

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

Construction Tax Guide Spring 2000

10. Review Recommendation:

_____ Amend

_____ Repeal

_____ **X** _____ Leave as is

_____ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

_____ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

This rule provides a necessary explanation as to when tax liability arises. At this time, there is no need to revise the rule. At such time as revisions to the rule become necessary, consideration should be given to including the previously noted rule reference along with further discussion of constructive receipt.

11. Manager action: Date: _____



_____ Reviewed recommendation

_____ Accepted recommendation

_____ Returned for further action

Comments: